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OFFICE OF PETITIONS

In re Application of

Cates, et al.

Application No. 10/663,722

Filed: September 17, 2003

Attorney Docket No. 1038-1268 MIS

For: MULTIVALENT IMMUNOGENIC
COMPOSITION CONTAINING RSV SUBUNIT
COMPOSITION AND INFLUENZA VIRUS
PREPARATION

**DECISION
ON PETITION**

This is a decision on the petition under 37 CFR 1.137(b), filed September 30, 2004, to revive the above-identified application.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." Petitioners are advised that this is not a final agency decision.

This application became abandoned for failure to timely and properly reply to the Notice to File Missing Parts of Nonprovisional Application, mailed December 11, 2003, which required petitioners to file replacement drawings, an executed declaration, and a surcharge within an extendable two month period from the mail date of the Notice.

On June 14, 2004 petitioners filed a request for a four month extension of time and required fee, replacement drawings, and a surcharge. On June 25, 2004 the Office mailed a Notice of Incomplete Reply that noted the June 14, 2004 response was incomplete due to the omission of an executed declaration and informed petitioner that the original period for reply set in the December 11, 2003 Notice remained in effect.

Therefore, the application became abandoned on June 12, 2004 for failure to timely submit an executed declaration. The filing of the instant petition precedes the mailing of a Notice of Abandonment.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;

- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

The instant petition does not satisfy requirement (1) above.

The declaration submitted with the instant petition is not acceptable. The declaration contains noninitialled, nondated alterations to Suryaprakash Sambhara's information. 37 CFR 1.52(c) states that "[a]ny interlineation, erasure, cancellation or other alteration of the application papers filed should be made on or before the signing of the accompanying oath or declaration pursuant to 1.63...." This includes the oath or declaration. The Office will not consider whether noninitialled and or nondated alterations were made before or after signing of the oath or declaration but will require a new oath or declaration. See MPEP 605.04(a).

Fortunately, the deficiencies or inaccuracies relate to a signing inventor. Thus, pursuant to 37 CFR 1.67(a)(2), Mr. Sambhara can correct his respective information on a supplemental declaration identifying all inventors and listing all information, but signed only by Mr. Sambhara.

The supplemental declaration taken with the declaration filed with the instant petition will be an acceptable reply.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop Petition
Crystal Plaza 2, Lobby, Room 1B03
Arlington, VA 22202

By FAX: (703) 872-9306 – ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.



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Office of Petitions